

FILED '06 DEC 11 14:54 USDC-ORE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CASCADE PENSION TRUST, et al

Plaintiffs,

Civil No. 06-6047-TC

v.

ORDER

HARLING ELECTRIC, INC., et al

Defendants.

COFFIN, Magistrate Judge:

Presently before the court is plaintiffs' motion (#34) for expenses and attorney fees in the amount of \$3,412.50.

Factual Background

Defendants were served with discovery requests, but did not respond to them within the time required. Plaintiffs' conferral with defendants' attorneys failed to produce responses and plaintiffs filed a motion to compel. Defendants did not respond to that either. This court ordered defendants

to show cause in writing within 11 days why the motion to compel discovery should not be allowed.

Defendants did not respond to the order to show cause. This court issued an order granting the motion to compel and ordering that :

Defendants shall make a filing with this court within 11 days showing cause why they should not have to pay plaintiffs' reasonable expenses incurred in making its motion, including attorney fees. Plaintiff shall have 11 days thereafter to respond. A failure by defendants to respond to this order will result in the granting of plaintiffs' reasonable expenses, including attorney fees.

Order (#33).

Defendants did not respond to the Order within eleven days.

Legal Background

Fed. R. Civ. P. §37 (a)(4) (A) provides that if a motion to compel is granted, the court shall, after affording an opportunity to be heard, require the party whose conduct necessitated the motion to pay to the moving party the reasonable expenses incurred in making the motion, including attorney fees, unless the court finds that the motion was filed without the movant first making a good faith effort to obtain the discovery without court action or that the opposing party's nondisclosure or objection was substantially justified, or that other circumstances make an award of expenses unjust.


Fed. R. Civ P. § 37 (a)(4)(A).

Discussion

Defendants' first filing regarding the motion to compel and its progeny, filed approximately 98 days after the motion to compel and approximately nineteen days after this court's second order to show cause, does not dispute the aforementioned events or the reasonableness of the fees. It merely states that defendants' actions were taken in good faith and arose from the need to confer with an

attorney specializing in the area of law at issue and a dispute regarding the scope of discovery allowable. It does not address why the motion and the show cause orders were ignored, or why motions to extend were not filed. Nor does it adequately demonstrate why the nondisclosure was substantially justified. As such, plaintiffs' motion (#34) for expenses and attorney fees is allowed. Defendants are jointly and severably liable to plaintiffs for expenses and attorney fees in the amount of \$3,412.50. Plaintiff's request for interest is not adequately supported as to the entitlement to interest and the interest rate applicable to this particular proceeding, and will require additional briefing if plaintiff wishes to pursue such matter.

DATED this 11 day of December, 2006.



THOMAS M. COFFIN
United States Magistrate Judge